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SUBJECT: LABOR CONTRACT LAW: SECOND DRAFT
ACCOMMODATES SOME BUSINESS CONCERNS

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1. (SBU) Summary: The National People's Congress (NPC) has invited the American Chamber of Commerce in China (Amcham) and the US-China Business Council to submit comments on the second draft Labor Contract Law (LCL) which the NPC published on December 25. Amcham hosted a breakfast for members on January 25 to discuss the draft law, and will submit a new round of comments to the NPC on January 26. In the second draft LCL, the NPC accommodated a number of recommendations that the US business community made after reviewing the first draft LCL in April (ref C). In some cases, the NPC imposed new provisions giving employees new rights. Key changes in the draft LCL are summarized in paras. 3-7. The complete text of the second draft LCL can be found on the amcham website, www.amcham-china.org.cn. End summary.

Background

2. (U) As reported in reftels, China has for a nearly a year been drafting a labor contract law meant to improve labor enforcement and address common practices that violate workers rights. International business associations in China have responded to NPC invitations to provide public comment on the draft law (ref B). This message is intended to highlight the changes between the first and second drafts that are of most interest to the international business community. As the LCL moves closer to final form, Embassy will report in more detail on how the law is likely to change China's overall labor climate.

Key changes in the Labor Contract Law, second draft

Consultation with unions/worker organizations on
company regulations and lay-offs:

2. (U) The second draft LCL removed a requirement

for labor union/worker organization approval of all changes to company rules and regulations that several US businesses found unworkable and troubling in the first draft and eliminated a requirement that unions/worker organizations approve lay-offs involving over 50 employees. Instead, the draft requires employers to consult with labor unions on changes to company rules and on all lay-offs of 20 or more employees (or 10 percent of the workforce, whichever is less).

13. (U) New limitations on use of fixed-term contracts and probationary periods:

The second draft LCL encourages in several ways the use of non-fixed term (indefinite) and makes it more difficult for employers to terminate employees by waiting for their fixed-term contracts to lapse. While the second draft eliminated a prohibition on termination of employees prior to the expiry of a contract, it requires employers, when extending an employee's fixed-term contract, to offer a new non-fixed term contract if the employee requests it. The draft also limits the duration of probationary periods according to a formula based on the total contract duration. In the case of termination at the end of a contract period, the draft requires employers to pay severance pay of one month per year served.

14. (U) New regulations on the use of contract workers:

The LCL attempts to discourage the use of contract

BEIJING 00000594 002 OF 002

labor as a means of evading employer obligations, and imposes new obligations on labor dispatch agencies (LDAs) which provide contract labor. The second draft LCL eliminated a one-year limitation on the use of contract labor that appeared in the first draft, as well as a requirement that LDAs deposit bonds for each contracted laborer. However, the new draft narrows the scope of positions for which contract labor can be used. Employers will have to report the use of contracted labor to the Ministry of Labor and Social Security (MOLSS) and duration of use must be limited to actual need. The second draft also adds a provision that entitled contracted labor to the same pay as regular employees, and specifies the duties of enterprises to the contracted labor they employ, including a requirement that the employer create a wage increase mechanism for long-term contracted workers. The draft makes employing enterprises and LDAs jointly liable for providing work injury insurance. As for LDAs, the new draft defines them as an employer, requires them to sign contracts of at least two years' duration with workers they contract out, requires them to pay wages monthly, and requires them to provide workers with at least the minimum wage, even when there is no work to which to assign them.

Penalties for failure to sign a labor contract:

15. (U) The second draft LCL removed a provision in the first draft that would have presumed the existence of a non-fixed term contract if the employer did not sign a written contract with an employee. Instead, the second draft requires execution of a contract within one month of hiring, and allows MOLSS to fine employers who fail to do so.

Non-compete clauses:

16. (U) The second draft LCL softens restrictions the first draft would have placed on the use of non-

compete clauses in labor contracts. The requirement to pay a minimum of one year's salary to former employees subject to non-compete clauses, and the cap on the damages for violations of non-compete clauses have both been eliminated. The second draft limits non-compete clauses to high-level management personnel, high-level technical personnel, and other personnel with knowledge of the employer's commercial secrets.

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